

REMARKS

Claims 1-5 were presented for examination, and were rejected under 35 U.S.C. §103(a) based on the combination of English and Pinard (USP 6,580,700). Claims 1 and 3-5 are currently amended. Claims 11 and 12 are new. Reconsideration is respectfully requested.

Claim 1 has been amended to recite that distance, data rate and loading are used to determine whether the alternative access point is preferable. Claim 3 has been amended to recite that lowest biased distance indicates which access point is better. New claim 11 recites that the distance calculation is a function of signal strength and transmit power backoff. New claim 12 recites that data rate calculation is a function of signal strength and protocol mode. The first channel/second channel limitation has been removed from the claims.

The claim amendments and new claims are supported by the specification as described below. With regard to the changes to claim 1, the specification states “the notion of what constitutes a better AP takes into account the distance to the AP in Banzais, the available data rate, and the loading (number of associated STAs) on the AP.”¹ With regard to claim 3, the specification states “a STA 16 will send a Bid message to an AP that is “better” than the STA’s current AP, where better means that the AP has a lower biased distance.”² With regard to claim 11, the specification states “the STA 16 also notes the received power level that accompanied the beacons and Announce messages and uses these values along with the TP backoff values to calculate the distance to the APs in Banzais.”³ With regard to claim 12, the specification states

¹ Page 51, lines 1-3

² Page 41, last full paragraph

³ Page 49, lines 16-18

“the data rate is deduced based on the received signal strength and the technology being used (i.e., in an 802.11 environment, the 802.11 mode of operation (a,b,g)).”⁴

Assuming *arguendo* that English and Pinard teach what has been asserted by the Office, claim 1 as amended still distinguishes the combination because distance, data rate and loading are all used to determine whether the alternative access point is preferable. In particular, those parameters are used together to reach a decision, rather than separately. While making a decision based on one of those parameters may have been known, Applicant believes that an integrated decision based on all of the parameters is novel and non-obvious. Applicant requests that a new search be performed.

Should there be unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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⁴ Page 52, lines 4-6